

Assembly Bill No. 1708

CHAPTER 334

An act to amend Sections 6031.5, 6065, 6086.10, 6140, 6140.5, 6141.1, 6145, and 6234 of, and to add Section 6086.16 to, the Business and Professions Code, relating to attorneys.

[Approved by Governor September 6, 2003. Filed
with Secretary of State September 8, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1708, Committee on Judiciary. State Bar of California.

Existing law, the State Bar Act, provides for the licensing and regulation of attorneys by the State Bar of California and establishes the Conference of Delegates of the State Bar. Existing law also establishes certain provisions applicable to a nonprofit successor entity of the Conference of Delegates of the State Bar if it is incorporated.

This bill would delete provisions regarding the Conference of Delegates of the State Bar. The bill would specify the Conference of Delegates of California Bar Associations as the successor entity of the Conference of Delegates of the State Bar.

Existing law, until January 1, 2004, gives an unsuccessful applicant for admission to the State Bar of California the right to inspect, within 4 months after the results of the examination have been declared, his or her examination papers that are in the actual, physical possession of the examining committee. Commencing January 1, 2004, existing law gives an unsuccessful applicant the right to inspect any of his or her examination documents within 4 months after the results of the examination have been declared.

This bill would instead make this change on January 1, 2009.

Existing law authorizes the State Bar to issue an order of public reproof against a State Bar member and authorizes an order of public reproof that imposes discipline or accepts resignation with a disciplinary matter pending to include a direction that the member pay costs.

This bill would make an order meeting that criteria enforceable as a money judgment and authorize it to be included in the individual's membership fee. The bill would declare that costs are penalties payable to the State Bar to promote rehabilitation and to protect the public.

Existing law provides for the enforcement of laws regarding unfair competition by authorizing injunctive actions to be prosecuted by the Attorney General, district attorney, county counsel, or city attorney or

prosecutor, or any person or entity acting for the interests of itself, its members, or the general public as specified.

This bill would require the State Bar to report to the Assembly and Senate Committees on Judiciary by January 1, 2005, on the status of its regulatory and disciplinary efforts concerning alleged abuses in private actions brought on behalf of the general public.

Existing law authorizes the State Bar of California, until January 1, 2004, to charge an annual membership fee of up to \$310 to active members of the State Bar.

This bill would extend the State Bar's authority to charge this membership fee to December 31, 2004.

Existing law provides for certain waivers of the State Bar annual membership fee. An active member with annual income from the practice of law of less than \$25,000 is presumptively eligible for a 50% waiver.

This bill would instead provide that an active member with annual individual earned income of less than \$30,000 from any source is presumptively eligible for a 50% waiver.

Existing law establishes the Client Security Fund to relieve or mitigate losses caused by the dishonest conduct of members of the State Bar in the practice of law. Existing law requires an attorney to reimburse the fund for money paid as a result of his or her conduct as a condition of continued practice.

This bill would authorize an assessment for reimbursement to be enforced as a money judgment if it is part of an order imposing public reproof or part of an order imposing discipline or accepting resignation with a disciplinary matter pending.

The people of the State of California do enact as follows:

SECTION 1. Section 6031.5 of the Business and Professions Code is amended to read:

6031.5. (a) State Bar sections, as established under and pursuant to Article 13 of the Rules and Regulations of the State Bar, and their activities shall not be funded with mandatory fees collected pursuant to subdivision (a) of Section 6140.

The State Bar may provide an individual section, or two or more sections collectively, with administrative and support services, provided the State Bar shall be reimbursed for the full cost of those services out of funds collected pursuant to subdivision (b), funds raised by or through the activities of the sections, or other funds collected from voluntary sources. The financial audit specified in Section 6145 shall confirm that the amount assessed by the State Bar for providing the services



reimburses the costs of providing them, and shall verify that mandatory dues are not used to fund the sections.

(b) Notwithstanding the other provisions of this section, the State Bar is expressly authorized to collect voluntary fees to fund the State Bar sections on behalf of those organizations in conjunction with the State Bar's collection of its annual membership dues. Funds collected pursuant to this subdivision, and other funds raised by or through the activities of the sections, or collected from voluntary sources, for their support or operation, shall not be subject to the expenditure limitations of subdivision (b) of Section 6140.05.

(c) Notwithstanding any other provision of law, the State Bar is expressly authorized to collect, in conjunction with the State Bar's collection of its annual membership dues, voluntary fees or donations on behalf of the Conference of Delegates of California Bar Associations, the independent nonprofit successor entity to the former Conference of Delegates of the State Bar which has been incorporated for the purposes of aiding in matters pertaining to the advancement of the science of jurisprudence or to the improvement of the administration of justice, and to convey any unexpended voluntary fees or donations previously made to the Conference of Delegates of the State Bar pursuant to this section to the Conference of Delegates of California Bar Associations. The Conference of Delegates of California Bar Associations shall pay for the cost of the collection. The State Bar and the Conference of Delegates of California Bar Associations may also contract for other services. The financial audit specified in Section 6145 shall confirm that the amount of any contract shall fully cover the costs of providing the services, and shall verify that mandatory dues are not used to fund any successor entity.

(d) The Conference of Delegates of California Bar Associations, which is the independent nonprofit successor entity to the former Conference of Delegates of the State Bar as referenced in subdivision (c), is a voluntary association, is not a part of the State Bar of California, and shall not be funded in any way through mandatory dues collected by the State Bar of California. Any contribution or membership option included with a State Bar of California mandatory dues billing statement shall include a statement that the Conference of Delegates of California Bar Associations is not a part of the State Bar of California and that membership in that organization is voluntary.

SEC. 2. Section 6065 of the Business and Professions Code, as amended by Section 6 of Chapter 415 of the Statutes of 2002, is amended to read:

6065. (a) (1) Any unsuccessful applicant for admission to practice, after he or she has taken any examination and within four months after



the results thereof have been declared, has the right to inspect those of his or her examination papers that are in the actual, physical possession of the examining committee at the time the request for inspection is made. The inspection shall occur at the office of the examining committee located nearest to the place at which the applicant took the examination.

(2) The applicant also has the right to inspect the grading of the papers whether the record thereof is marked upon the examination or otherwise.

(b) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 3. Section 6065 of the Business and Professions Code, as added by Section 7 of Chapter 415 of the Statutes of 2002, is amended to read:

6065. (a) (1) Any unsuccessful applicant for admission to practice, after he or she has taken any examination and within four months after the results thereof have been declared, has the right to inspect his or her examination papers at the office of the examining committee located nearest to the place at which the applicant took the examination.

(2) The applicant also has the right to inspect the grading of the papers whether the record thereof is marked upon the examination or otherwise.

(b) This section shall become operative on January 1, 2009.

SEC. 4. Section 6086.10 of the Business and Professions Code is amended to read:

6086.10. (a) Any order imposing a public reproof on a member of the State Bar shall include a direction that the member shall pay costs. In any order imposing discipline, or accepting a resignation with a disciplinary matter pending, the Supreme Court shall include a direction that the member shall pay costs. An order pursuant to this subdivision is enforceable both as provided in Section 6140.7 and as a money judgment.

(b) The costs required to be imposed pursuant to this section include all of the following:

(1) The actual expense incurred by the State Bar for the original and copies of any reporter's transcript of the State Bar proceedings, and any fee paid for the services of the reporter.

(2) All expenses paid by the State Bar which would qualify as taxable costs recoverable in civil proceedings.

(3) The charges determined by the State Bar to be "reasonable costs" of investigation, hearing, and review. These amounts shall serve to defray the costs, other than fees for the services of attorneys or experts, of the State Bar in the preparation or hearing of disciplinary proceedings,



and costs incurred in the administrative processing of the disciplinary proceeding and in the administration of the Client Security Fund.

(c) A member may be granted relief, in whole or in part, from an order assessing costs under this section, or may be granted an extension of time to pay these costs, in the discretion of the State Bar, upon grounds of hardship, special circumstances, or other good cause.

(d) In the event an attorney is exonerated of all charges following a formal hearing, he or she is entitled to reimbursement from the State Bar in an amount determined by the State Bar to be the reasonable expenses, other than fees for attorneys or experts, of preparation for the hearing.

(e) In addition to other monetary sanctions as may be ordered by the Supreme Court pursuant to Section 6086.13, costs imposed pursuant to this section are penalties, payable to and for the benefit of the State Bar of California, a public corporation created pursuant to Article VI of the California Constitution, to promote rehabilitation and to protect the public. This subdivision is declaratory of existing law.

SEC. 5. Section 6086.16 is added to the Business and Professions Code, to read:

6086.16. The State Bar shall report to the Assembly and Senate Committees on Judiciary by January 1, 2005, on the status of its regulatory and disciplinary efforts concerning alleged abuses by private actions brought on behalf of the general public pursuant to Section 17204 of the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Division 6).

SEC. 6. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee for active members at a sum not exceeding three hundred ten dollars (\$310).

(b) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election.

(c) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 7. Section 6140.5 of the Business and Professions Code is amended to read:

6140.5. (a) The board shall establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of the active members of the State Bar arising from or connected with the practice of law. Any payments from the fund shall



be discretionary and shall be subject to regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the State Bar Court, or to any board or committee created by the board of governors.

(b) Upon making a payment to a person who has applied to the fund for payment to relieve or mitigate pecuniary losses caused by the dishonest conduct of an active member of the State Bar, the State Bar is subrogated, to the extent of that payment, to the rights of the applicant against any person or persons who, or entity that, caused the pecuniary loss. The State Bar may bring an action to enforce those rights within three years from the date of payment to the applicant.

(c) Any attorney whose actions have caused the payment of funds to a claimant from the Client Security Fund shall reimburse the fund for all moneys paid out as a result of his or her conduct with interest, in addition to payment of the assessment for the procedural costs of processing the claim, as a condition of continued practice. The reimbursed amount, plus applicable interest and costs, shall be added to and become a part of the membership fee of a publicly reprovved or suspended member for the next calendar year. For a member who resigns with disciplinary charges pending or a member who is suspended or disbarred, the reimbursed amount, plus applicable interest and costs, shall be paid as a condition of reinstatement of membership.

(d) Any assessment against an attorney pursuant to subdivision (c) that is part of an order imposing a public reproof on a member or is part of an order imposing discipline or accepting a resignation with a disciplinary matter pending, may also be enforced as a money judgment.

SEC. 8. Section 6141.1 of the Business and Professions Code is amended to read:

6141.1. (a) The payment by any member of the annual membership fee, any portion thereof, or any penalty thereon, may be waived by the board as it may provide by rule. The board may require submission of recent federal and state income tax returns and other proof of financial condition as to those members seeking waiver of all or a portion of their fee or penalties on the ground of financial hardship.

(b) The board shall adopt rules providing that:

(1) An active member who can demonstrate annual individual earned income of less than forty thousand dollars (\$40,000) derived from the provision of arbitration, mediation, referee, or other dispute resolution services and, generally, from the practice of law shall presumptively qualify for a waiver of 25 percent of the annual membership fee.

(2) An active member who can demonstrate total annual individual earned income of less than thirty thousand dollars (\$30,000) shall



presumptively qualify for a waiver of 50 percent of the annual membership fee.

SEC. 9. Section 6145 of the Business and Professions Code is amended to read:

6145. (a) The board shall contract with a nationally recognized independent public accounting firm for an audit of its financial statement for each fiscal year beginning after December 31, 1998. The financial statement shall be promptly certified under oath by the Treasurer of the State Bar, and a copy of the audit and financial statement shall be submitted within 120 days of the close of the fiscal year to the board, the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

The audit shall examine the receipts and expenditures of the State Bar and the State Bar sections, to assure that the receipts of the sections are being applied, and their expenditures are being made, in compliance with subdivision (a) of Section 6031.5, and that the receipts of the sections are applied only to the work of the sections.

The audit also shall examine the receipts and expenditures of the State Bar to ensure that the funds collected on behalf of the Conference of Delegates of California Bar Associations as the independent successor entity to the former Conference of Delegates of the State Bar are conveyed to that entity, that the State Bar has been paid or reimbursed for the full cost of any administrative and support services provided to the successor entity, including the collection of fees or donations on its behalf, and that no mandatory dues are being used to fund the activities of the successor entity.

(b) The board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations from July 1, 2000, to December 31, 2000, inclusive. A copy of the performance audit shall be submitted by May 1, 2001, to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

Every two years thereafter, the board shall contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations for the respective fiscal year, commencing with January 1, 2002, through December 31, 2002, inclusive. A copy of the performance audit shall be submitted within 120 days of the close of the fiscal year for which the audit was performed to the board, to the Chief Justice of the Supreme Court, and to the Assembly and Senate Committees on Judiciary.

For the purposes of this subdivision, the Bureau of State Audits may contract with a third party to conduct the performance audit. This



subdivision is not intended to reduce the number of audits the Bureau of State Audits may otherwise be able to conduct.

SEC. 10. Section 6234 of the Business and Professions Code is amended to read:

6234. Any information provided to or obtained by the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, shall be as follows:

(a) Confidential and this confidentiality shall be absolute unless waived by the attorney.

(b) Exempt from the provisions of Section 6086.1.

(c) Not discoverable or admissible in any civil proceeding without the written consent of the attorney to whom the information pertains.

(d) Not discoverable or admissible in any disciplinary proceeding without the written consent of the attorney to whom the information pertains.

(e) Except with respect to the provisions of subdivision (d) of Section 6232, the limitations on the disclosure and admissibility of information in this section shall not apply to information relating to an attorney's noncooperation with, or unsuccessful completion of, the Attorney Diversion and Assistance Program, or any subcommittee or agent thereof, or to information otherwise obtained by the Office of the Chief Trial Counsel, by independent means, or from any other lawful source.

SEC. 11. It is the intent of the Legislature that the changes made to Sections 6086.10 and 6140.5 of the Business and Professions Code by this act shall apply to costs and assessments ordered but unpaid on the date this act becomes operative, as well as to any costs and assessments ordered thereafter.

SEC. 12. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

